

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

Tom Emmer,

Complainant,

vs.

DISMISSAL
ORDER

Chris Brazelton, Brazelton for House, Jim
Bakula, and Bakula for Representative,

Respondents.

On November 10, 2008, Tom Emmer filed a Complaint with the Office of Administrative Hearings alleging Respondents violated Minn. Stat. § 211B.06 by preparing and disseminating false campaign material about him in an attempt to defeat his candidacy for Minnesota House of Representatives District 19B.

The Chief Administrative Law Judge assigned this matter to the undersigned Administrative Law Judge on November 10, 2008, pursuant to Minn. Stat. § 211B.33. A copy of the Complaint and attachments were sent to each Respondent by United States mail on November 10, 2008.

After reviewing the Complaint and attachments, the Administrative Law Judge finds that the Complaint does not support a prima facie violation of Minn. Stat. § 211B.06.

Based upon the Complaint and the supporting filings and for the reasons set out in the attached Memorandum,

IT IS ORDERED:

That the Complaint filed by Tom Emmer against Respondents Chris Brazelton, Brazelton for House, Jim Bakula, and Bakula for Representative is DISMISSED.

Dated: November 12, 2008

/s/ Beverly Jones Heydinger
BEVERLY JONES HEYDINGER
Administrative Law Judge

NOTICE

Under Minn. Stat. § 211B.36, subd. 5, this order is the final decision in this matter and a party aggrieved by this decision may seek judicial review as provided in Minn. Stat. § § 14.63 to 14.69.

MEMORANDUM

The Complainant was the incumbent candidate for Minnesota House of Representatives District 19B in the November 4, 2008, election. He was re-elected by 61 percent of the vote.¹ His DFL-endorsed opponent was Chris Brazelton. She received 39 percent of the vote. Respondent Jim Bakula was the DFL-endorsed candidate for Minnesota House of Representatives District 19A.

The Complaint alleges that a campaign flyer jointly paid for and disseminated by Ms. Brazelton's campaign committee (Brazelton for House) and Jim Bakula's campaign committee (Bakula for Representative) contained false statements designed to injure the Complainant's reputation and defeat his candidacy for re-election. The flyer concerned recent legislative changes to the rules governing the "Green Acres" program, which affects certain agricultural land owners in Wright County. The flyer stated, in part, as follows:

Wright County land owners and farmers TAKE NOTICE:

During the campaign we have met many folks who have numerous concerns with recent changes to GREEN ACRES. We do not agree with the new rules and, if elected, will fight to immediately repeal the changes.

We need to take the time to get it right.

Representative Bruce Anderson and Tom Emmer voted for the enactment of the new Green Acres rules after squandering months to draft a comprehensive solution. Now they hide under the cover of the blame game.

The Complainant argues that the statement in the flyer that he voted for the rules "after squandering months to draft a comprehensive solution" is false. The Complainant maintains that the new rules were inserted into the 251 page Omnibus Tax Bill without being "vetted through a public process," and that he did attempt two amendments to the proposed language during the debate on the final passage of the Omnibus Tax Bill on the House floor on May 5, 2008. According to the Complaint, the Respondents knew these facts prior to mailing the flyer to Wright County Green Acre enrollees.

¹ According to the Minnesota Secretary of State's website, Mr. Emmer received 61% of the vote and Ms. Brazelton received 39% of the vote.

Minn. Stat. § 211B.06 prohibits a person from intentionally participating in the preparation, dissemination, or broadcast of campaign material with respect to the personal or political character or acts of a candidate that is designed or tends to injure or defeat a candidate, and which the person knows is false or communicates to others with reckless disregard of whether it is false. As interpreted by the Minnesota Supreme Court, the statute is directed against false statements of fact. It is not intended to prevent criticism of candidates for office or to prevent unfavorable deductions or inferences derived from a candidate's conduct.² In addition, expressions of opinion, rhetoric, and figurative language are generally protected speech if, in context, the reader would understand that the statement is not a representation of fact.³

The statement at issue in this matter, that the Complainant voted for the new Green Acres rules "after squandering months to draft a comprehensive solution," is an opinion or unfavorable criticism and, as such, is not actionable under Section 211B.06. The Complainant does not deny that he voted for the Omnibus Tax Bill. Instead he objects to the characterization that he "squandered months" trying to draft a solution. Whether the Complainant "squandered" time is not something that can be proven factually true or false. Moreover, Complainant's assertion that Respondents knew the new Green Acres rules were "buried" in the Omnibus Tax Bill and not "adequately vetted and debated through the legislative process" is insufficient to support a prima facie allegation under Minn. Stat. § 211B.06. There is no requirement that campaign material be thorough or complete. Minnesota's appellate courts have repeatedly held that the statute is not broad enough to prohibit incomplete and unfair campaign statements, even those that are clearly misleading.⁴

Accordingly, this matter must be dismissed.

B.J.H.

² *Kennedy v. Voss*, 304 N.W.2d 299 (Minn. 1981); *Hawley v. Wallace*, 137 Minn. 183, 186, 163 N.W. 127, 128 (1917); *Bank v. Egan*, 240 Minn. 192, 194, 60 N.W.2d 257, 259 (1953); *Bundlie v. Christensen*, 276 N.W.2d 69, 71 (Minn. 1979) (interpreting predecessor statutes with similar language).

³ *Jadwin v. Minneapolis Star and Tribune Co.*, 390 N.W.2d 437, 441 (Minn. App. 1986), citing *Old Dominion Branch No. 496, National Assoc. of Letter Carriers v. Austin*, 418 U.S. 264, 284-86 (1974); *Greenbelt Coop. Publishing Assoc. v. Bresler*, 398 U.S. 6, 13-14 (1970). See also *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 16-17 (1990); *Diesen v. Hessburg*, 455 N.W.2d 446, 451 (Minn. 1990); *Hunter v. Hartman*, 545 N.W.2d 699, 706 (Minn. App. 1996);

⁴ See, *Bundlie v. Christensen*, 276 N.W.2d at 71 (statements telling only one side of the story, while unfair and unjust, were not untrue and therefore not actionable under predecessor statute).